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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,296	11/14/2001	Gary R. Hammerslag	BOATEC.001CP2	1477
20995	7590	11/02/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,296

Applicant(s)

HAMMERSLAG, GARY R.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 22-33 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-18,22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species I in the reply filed on March 3, 2005 is acknowledged.

Claims 3-5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 3, 2005.

Allowable Subject Matter

The indicated allowability of claims 1, 2 and 6-18 is withdrawn in view of the reference(s) to Hallenbeck (US 5341583) as indicated in the office action mailed November 30, 2004 and a review of the claim construction with regard to 35 U.S.C. 112, second paragraph. Additionally, review of the reference of Carroll (US 5157813) indicates that the indication of allowable subject matter with respect to claims 22-33 must be withdrawn. Rejections based on these newly utilized reference(s) follow.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2 and 4-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant indicates the multi strand cable is "worked to reduce the interstitial space between the strands" in claim 1, line 5. The limitation upon the final product is not clearly

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specified because the test by which the final product can be judged as to whether the cable has been worked to reduce the interstitial space between the strands is unknown. There is no discriminant defined to precisely state whether the cable has been worked to reduce the interstitial space between the strands from viewing the cable and for this reason this passage is indefinite because it does not set clearly set forth in an ascertainable manner the scope of the claim. The remaining claims are indefinite because they depend from an indefinite claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6-10, 14, 22, 23 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5157813) in view of Hallenbeck (US 5341583).

Carroll (figures 1, 4, 6) teaches a closure system for footwear including a shoe including a lacing zone, pairs of opposing lace guide members defining a lace path which extends throughout the lacing zone, a lace 12 guided by the guide members in a zigzag pattern with the ends removably secured with respect to a spool 32 via the hook 34 and spring 98, and a tightening mechanism including a control in the cap 30 for winding the lace around the spool. Typical laces are multi-filament in nature. The difference is that a lace is used rather than a multi-strand cable. It would have been obvious to utilize a cable rather than a lace in view of Hallenbeck (figure 1) teaching that it is well known to utilize a tightening element in the form of

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a rope made of plastic or metal (col. 2, lines 36-37) for its inherent improved strength. Since the rope is made of plastic or metal it inherently has been worked to some extent in its fabrication so as to form the rope and in its formation had the interstitial space reduced. In regard to claims 7 and 8, the particular choice of cable diameter is to be selected on the basis of its desired strength, flexibility and ease of use and since the multi-strand cable made of metal or plastic is taught by Hallenbeck the particular diameter is to be selected and applicant's ranges are therefore obvious. As to claim 10, the lace guides of Carroll inherently permit sliding of the lace and thereby provide a dynamic adjustment of the shoe.

In regard to claim 22, Carroll (figures 1, 4, 6) teaches a closure system for footwear including a shoe including a lacing zone, pairs of opposing lace guide members defining a lace path which extends throughout the lacing zone, a lace 12 guided by the guide members in a zigzag pattern with the ends removably secured with respect to a spool 32 via the hook 34 and spring 98, and a tightening mechanism including a control in the cap 30 for winding the lace around the spool. The difference is that a lace is used rather than a cable. It would have been obvious to utilize a cable rather than a lace in view of Hallenbeck (figure 1) teaching that it is well known to utilize a tightening element in the form of a rope made of plastic or metal (col. 2, lines 36-37) for its inherent improved strength. As to claim 27, the spring 38 of the device of Carroll can take up some slack as indicated in column 8, lines 25-29. In regard to claim 30, the use of aglets to bind the ends of laces or cables is well known as evidenced by Carroll who uses such structure. As to claim 31, the lace guides of Carroll inherently permit sliding of the lace and thereby provide a dynamic adjustment of the shoe.

Claims 11-13, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5157813) in view of Hallenbeck (US 5341583) as applied to claims 10 and 22 above, and further in view of Richardson (US 5430960).

Further modification of the shoe of Carroll such that there is an expansion limiting strap would have been obvious in view of Richardson (figures 1 and 3) teaching that it is well known that securement of a strap 18 about the lacing of a shoe provides enhanced support for the ankle (col. 6, lines 14-18). Placement of the strap over the lacing as suggested by Richardson so as to provide ankle support would inherently prevent the lace from expanding in the plane of the strap. Therefore, it would have been obvious to modify the tightener structure of Carroll so that there is an expansion limiting strap about the lacing of the shoe in view of Richardson suggesting such structure.

Claims 15-18, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5157813) in view of Hallenbeck (US 5341583) as applied to claims 14 and 22 above, and further in view of Bidoia (US 4961544).

Further modification of the shoe of Carroll such that the handle is a knob turnable in a single direction would have been obvious in view of Bidoia (figures 1-3) which suggests the use of the one-way construction 13/14 so as to provide an enhanced tightener which can be released immediately simply as a result of pressure on the handle, but in which the drum can easily be driven in rotation by using the handle (col. 1, lines 44-50).

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll (US 5157813) in view of Hallenbeck (US 5341583) as applied to claim 22 above, and further in view of Martin (US 4142307).

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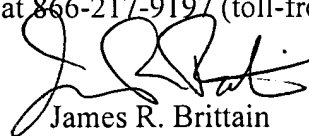
Further modification of the shoe of Carroll so that tubes are used for the guides would have been obvious in view of Martin (figures 1, 7) which suggests the use of tubes 18 in the guides 17 as being useful for guiding cables.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
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JRB